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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/048,013	04/29/2002	Michael Luconi	LUCONII '	1351
1444 7	590 06/03/2003		·	
BROWDY AND NEIMARK, P.L.L.C.			EXAMINER	
624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			LEARY, LOUISE N	
			ART UNIT	PAPER NUMBER
	·		1654 DATE MAILED: 06/03/2003	8

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No. Applicant(s) LUCONI ET AL.	Activities the second s						
Examiner Louise N. Loary - The MAILING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Ederation of time may be available under the provisions of 37 CFR 1.138(a). In an event, however, may a reply be timely filled If the peaced formly specified above, the maintern stabulary period will be provided and provisions of 37 CFR 1.138(a). In an event, however, may a reply be timely filled If the peaced formly specified above, the maintern stabulary period will be peaced with the provisions of 37 CFR 1.738(b). If the peaced formly specified above, the maintern stabulary period will apply and will expect thin the peaced timely. If the peaced formly specified above, the maintern stabulary period will apply and villed apply SIX (b) MONTHS from the mainting data of this communication of the mainting data of this communication. Failure to prival with the decidence, the mainting data of this communication, certification is from the mainting data of this communication, certification is from the mainting data of this communication, certification is one of the communication of the mainting data of this communication, certification is non-final. 31 Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1,2 and 19-28 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5b) Claim(s) 1,12 and 19-28 is/are rejected. 7c) Claim(s) 1,12 and 19-28 is/are rejected. 7d) Claim(s) 1,12 and 19-28 is/are rejected. 7e) Claim(s) 3,3 and 8-10 Is/are objected to by the Examiner. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on 29 April 2002 is/are: a) accepted or b) objected to by the Exa		Application No.	Applicant(s)				
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A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Expansions of time may be switched worth the provision of 3° CPR 1.35(a). In a ovent, however, may a reply be timely field Expansions of time may be switched because the maximum attention period will be provided for reply specified above is lies than thirty (30) days, a reply which the studiety minimum of thirty (30) days, a reply which the studiety minimum of thirty (30) days will be consisted timely. If this pared for reply specified above is lies than thirty (30) days, a reply which the studiety minimum of thirty (30) days, a reply which the studiety minimum of the mailing date of this communication. Falsa to reply which the set of extended princed for reply will, by studiet, cause the application to become AMANDONEO (35 U.S.C. § 130). This action is FINAL. 2b) This action is non-final. 3	•••	ears on the cover sheet with the c	correspondence address				
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- 1. Claims 1-12 and 19-28 are pending in this application.
- Claims 13-18 have been canceled per applicant's request.
- 2. Applicant is advised that should claims 11 and 12 be found allowable, claim12 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).
- 3. Claim1-12 and 19-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86

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USPQ 481 (Bd. App. 1949). In the present instance, claim 1 recites the broad recitation "improving the fertilization activity of spermatozoa", and the claim also recites "in particular for increasing spermatozoa motility" which is the narrower statement of the range/limitation.

Claims 1-3 and 19-28 rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: (a) in vitro and in vivo method steps and/or; (b) method steps describing amounts of a phosphatidyl inositol-3-kinase used to treat the spermatozoa and/or; (c) method steps distinctly claiming reaction conditions necessary to perform the method.

Correction is required to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- 4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1,2,4,6,7 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nass-Arden et al (Molecular Reproduction and Development, Vol. 25; p 369-373; (1990) in combination with Bonjouklian et al (US 5,378,725).

Nass-Arden et al report motility of spermatozoa treated with quercetin is stimulated 3-4 hours after incubation. Also, Nass-Arden et al describe results from comparing spermatozoa treated with quercetin to untreated spermatozoa. See the

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Abstract on page 369. Nass-Arden et al provide a description of sperm cells used in a wash and spin method. Note the "Materials and Methods" section on pages 369-370. Thus, Nass-Arden et al disclose the invention claimed except for stating quercetin is a phosphatidyl-3-kinase (PI3K) inhibitor.

However, regarding stating that quercetin is a phosphatidyl-3-kinase (PI3K) inhibitor in the instant method claimed, Bonjouklian et al disclose wortmannin or wortmannin analogs and quercetin or quercetin analogs inhibit phosphatidylinositol-3-kinase in human cells. See the abstract and column 1, lines 1-60 and column 2, lines 30-44.

Hence, Nass-Arden et al disclose the invention claimed except for stating quercetin is a phosphatidyl-3-kinase (PI3K) inhibitor which was provided by the Bonjouklian et al disclosure that wortmannin or wortmannin analogs and quercetin or quercetin analogs inhibit phosphatidylinositol-3-kinase in human cells. The instant invention was deemed obvious to skilled artisans at the time of conception in view of the Nass-Arden et al disclosure in combination with the Bonjouklian et al disclosure.

Therefore, it would have been obvious to one having ordinary skill in this art at the time this invention was made to provide a process as claimed because Nass-Arden et al disclose the method steps and starting materials used in the invention claimed except for stating quercetin is a phosphatidyl-3-kinase (PI3K) inhibitor that was provided by Bonjouklian et al disclosure that wortmannin or wortmannin analogs and quercetin or quercetin analogs inhibit phosphatidylinositol-3-kinase in human cells which renders obvious the invention claimed.

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5. Claims 3, 5 and 8-10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louise N. Leary whose telephone number is (703) 308-3533. The examiner can normally be reached on Monday to Friday from 9:30 to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

For 24 hour access to patent application information, 7 days a week, or for filing patent applications electronically, please visit our website at www.uspto.gov and click on the button "Patent electronic Business Center" for more information.

Ullan

May 31, 2003